

IN THE WATER COURT OF THE STATE OF MONTANA  
UPPER MISSOURI DIVISION  
JEFFERSON RIVER BASIN (41G)  
PRELIMINARY DECREE

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CLAIMANT: Rocking FC LLC

**CASE 41G-0593-R-2023**  
41G 203867-00

**NOTICE OF FILING OF MASTER'S REPORT**

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

**MASTER'S REPORT**

FINDINGS OF FACT

1. Claim 41G 203867-00 is an instream fish and wildlife claim from the Old Jefferson River Channel owned by Rocking FC LLC.
2. Claim 41G 203867-00 received the following DNRC issue remarks:

THE FLOW RATE HAS NOT BEEN EXAMINED AS NO QUANTIFIED FLOW RATE WAS CLAIMED.

PURSUANT TO WATER COURT ORDER, IF NO OBJECTIONS TO THIS CLAIM ARE FILED, THE CLAIMED A VOLUME OF 20 ACRE-FEET WILL BE REINSTATED.

3. On April 28, 2023, Rocking FC LLC filed Claimant's Comments on Issue Remarks in response to the flow rate of the water right. The Claimant's agree with resolving the two issue remarks as set forth in this Court's Order Consolidating Case and Order Setting Filing Deadline dated February 21, 2023.
4. To resolve the first issue remark, Rocking FC LLC agrees with the flow rate being described with the standard information remark:

THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNTS NECESSARY TO SUSTAIN THIS PURPOSE. THIS RIGHT SHALL CONTINUE TO BE UTILIZED IN ACORDANCE WITH HISTORICAL PRACTICES.

The claim should be decreed with this standard flow rate information remark and the issue remarks should be removed from the claim abstract.

5. To resolve the second issue remark, Rocking FC LLC agrees the volume of 20 acre-feet should be reinstated. This issue remark does not require further proceedings and should be removed from the claim abstract.

#### CONCLUSIONS OF LAW

1. A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content. § 85-2-227, MCA. This prima facie proof may be contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that the elements of the claim do not accurately reflect the beneficial use of the water right as it existed prior to July 1, 1973. This is the burden of proof for every assertion that a claim is incorrect. Rule 19, W.R.Adj.R.

2. Section 85-2-248(2), MCA requires the Water Court to resolve all issue remarks that are not resolved through the objection process. The Montana Water Court has the authority to resolve issue remarks when the claim file and information available to the Court provide a sufficient basis to do so. § 85-2-248(3), MCA. The issue remarks

on claim 41G 203867-00 were placed on the claim to provide notice of certain aspects of the claim. The remarks have served their purpose and may be removed.

3. All issue remarks to claims that are not resolved through the filing of an objection must be resolved pursuant to § 85-2-248, MCA. § 85-2-248(2). However, the requirement to resolve issue remarks does not eliminate the prima facie status granted to water rights, nor does it change the burden of proof required to modify or invalidate a claim. 43Q 200996-00 et al., Order Establishing Volume and Order Closing Case, at 18, June 8, 2015.

#### RECOMMENDATIONS

1. The issue remarks should be removed from claim 41G 203867-00.

A Post Decree Abstracts of Water Right Claim is served with the Report to confirm that the recommended corrections have been made in the state's centralized record system.

**ELECTRONICALLY SIGNED AND DATED BELOW.**

#### **Service via Electronic Mail:**

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**POST DECREE  
ABSTRACT OF WATER RIGHT CLAIM  
JEFFERSON RIVER  
BASIN 41G**

**Water Right Number:** 41G 203867-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** ROCKING FC LLC  
9940 E YUCCA ST  
SCOTTSDALE, AZ 85260

**Priority Date:** APRIL 1, 1967

**Type of Historical Right:** USE

**Purpose (use):** FISH AND WILDLIFE

**Flow Rate:**

THE FLOW RATE IS LIMITED TO THE MINIMUM AMOUNTS NECESSARY TO SUSTAIN THIS PURPOSE. THIS RIGHT SHALL CONTINUE TO BE UTILIZED IN ACCORDANCE WITH HISTORICAL PRACTICES.

**Volume:** 20.00 AC-FT

**Source Name:** UNNAMED TRIBUTARY OF JEFFERSON RIVER

**Source Type:** SURFACE WATER

ALSO KNOWN AS OLD JEFFERSON RIVER CHANNEL

**Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SESESE	28	1S	5W	MADISON

**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** INSTREAM

**Period of Use:** JANUARY 1 TO DECEMBER 31

**Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			SESESE	28	1S	5W	MADISON